



02 August 2019

Susie Black  
Director A/G Adjudication  
Australian Competition and Consumer Commission  
By email [Susie.Black@acc.gov.au](mailto:Susie.Black@acc.gov.au)

Dear Ms Black

## Australian Banking Association (ABA) application for authorisation AA 1000441

I refer to your letter of 15 July requesting further information on the ABA's application for authorisation.

The overall purpose of the above application is to implement the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (so far as they relate to industry action), and to codify the concept of a basic bank account (BBA) so as to further the interests of consumers – especially those on low incomes.

Since the new Banking of Practice was approved by ASIC last year, the ABA has developed, after in-depth consultation with consumer and community groups, as well as the Australian Small Business and Family Enterprise Ombudsman, a series of further reforms directed at enhancing the Code for the benefit of customers of Australian banks. These changes have been the subject of applications to ASIC for further approval and of this application to the ACCC (in addition to the changes that arise directly from the Royal Commission recommendations).

### Submission by consumer groups

We note that your letter of 15 July and the questions therein focus to a large extent on a submission by the Consumer Action Law Centre (Consumer Action), the Financial Rights Legal Centre (Financial Rights) and Financial Counselling Australia (FCA) (the 'consumer group submission').

We welcome the consumer group submission and note that it expressly supports the ABA's application and agrees that the net public benefit of the proposed changes outweighs any competitive detriment:

"Generally, we are supportive of the ABA application and agree there will be a net public benefit with the introduction of changes to the Code that outweigh any competitive detriments that may arise. We welcome the amendments addressing dishonour and overdrawn fees and informal overdrafts as well as the introduction of minimum features and the general concept of basic bank accounts."

The submission goes on to explain that the recommendations (as outlined below) are made by way of suggestions that the organisations behind the submission believe would be of additional benefit to consumers.

We have only addressed the recommendations in the consumer group submission on which the ACCC has specifically requested a response. These responses, together with our responses to the ACCC's broader questions, are outlined below.



## Response to relevant recommendations

### Recommendation 2: All ABA member banks should provide a basic bank account

We note that all Member Banks (ABA current and future members with a retail presence in Australia, who we note are now required, as a condition of membership, to subscribe to the Code) will, under the proposed provisions, be required to offer eligible customers (concession cardholders) a basic, low or no fee account that has:

- No informal overdrafts (except where impossible or reasonably impractical to prevent these, or with a customer's express agreement)
- No dishonour fees; and
- No overdrawn fees.

This commitment ensures that the substance of the recommendations of the Financial Services Royal Commission on this point are implemented.

The commitment to offer a basic, low or no fee account meets a broad industry commitment to affordable banking.

The proposal to codify the concept of BBA) is about transparency and promoting awareness about what a customer can, at a minimum, expect from a product described as such. The proposal does not involve mandating that banks offer such accounts. We consider decisions on the type of products offered to be commercial decisions for individual banks.

The ABA has now confirmed that 10 Member Banks (among 19) offer BBAs. This includes the four major banks and the major regional banks. The remaining Member Banks offer a low or no fee account with some features consistent with a BBA. We consider that customers who would be eligible for a BBA are most likely to seek the services of a Member Bank who offers a BBA. In addition, the incremental uptake by eligible customers by virtue of making the provision of a BBA mandatory is likely to be insignificant.

### Recommendation 4: Clarify that basic bank accounts should be offered to holders of all government concession or pension cards, and that banks can broaden the eligibility criteria for basic bank accounts

Before addressing this submission directly, we take the opportunity to point out that BBAs may not always be the most suitable account type for holders of government concession cards. For example, partially self-funded retirees might be recipients of benefits, and so be holders of government cards and be 'eligible customers' under paragraph 44. However, but they may still have needs – such as a share broking functionality for example - that cannot be served by basic accounts. So while the option of access to a basic or low or no fee account should be made known to eligible customers, the Code should not be interpreted as making the judgment that such accounts are the most suitable option for any particular eligible customer.

The consumer group submission raises a concern, in the first limb of this recommendation, that the absence of express reference to "basic bank account" in paragraph 44 of the Code:

"enables even banks that offer basic accounts to avoid providing information on these accounts to customers who would be eligible (offering 'low fee' accounts instead)."

The absence of a reference to a BBA in paragraph 44 of the Code is not intended as a mechanism for avoiding telling eligible customers about BBAs. Paragraph 44 commits Member Banks to providing information to relevant customers "about any banking services we offer that have low or no standard fees and charges". Paragraph 44 also cross-references Chapter 16, which includes further commitments around raising awareness of basic, low, or no fee accounts and the commitment to provide basic accounts to eligible customers who ask for one. However, to remove doubt, paragraph 44 could be amended to read:



"If you apply for a new transaction account, we will ask you if you have any of the following government cards. If you tell us that you have one of these cards then we will give you information about any **basic bank accounts or other** banking services we offer that have low or no standard fees and charges."

The second limb of this recommendation suggests that the Code should expressly recognise that banks are free to apply broader criteria if they wish to do so.

The proposed new paragraph 47 defines an 'eligible customer' by reference to holders of the cards specified in paragraph 44. This concept of 'eligible customer' is an important inclusion in the Code as it is the criterion for the application of the commitments not to charge overdrawn fees, dishonour fees and the restriction on informal overdrafts. These only apply to eligible customers who hold basic, low or no fee accounts.

There is, however, nothing in the proposed changes to the Code to suggest that banks are confined to offering basic accounts only to such eligible customers as defined in paragraph 47. Banks must adopt the criteria in paragraph 47 as a minimum but are free to offer basic accounts to a broader range of customer – some banks have no eligibility criteria for their basic accounts.

However, to remove any doubt, the definition of 'eligible customer' in paragraph 47 could be amended as follows:

"means a person who **at least** holds a current government concession card listed in paragraph 44, **although we may offer broader eligibility criteria**".

### Recommendation 5: Codify proactive provision of basic, low and no-fee accounts for new and existing bank customers, including through data analysis

The consumer submission suggests that this recommendation is primarily focussed on the proposal that:

"customers who start receiving government support payments after opening an account should also be flagged for notification about basic, low or no-fee accounts."

As mentioned in the Application, many Member Banks are implementing processes for proactively identifying eligible customers. In addition to the measures identified in the Application, at least two banks have projects underway to contact existing customers who may be eligible for a BBA. Member Banks will continue to explore processes for flagging customers who may be eligible for basic, low or no fee accounts.

However, we note that the suggestion put forward in the consumer group submission to identify eligible customers through data analysis requires the co-operation of the relevant Federal Government agencies who provide these support payments, such as the Department of Human Services and Centrelink, to overcome technical issues associated with identifying eligible customers through payment codes.

Government support payments made to eligible individuals are identifiable by a payment code which is associated with that payment. However, it is not possible for banks to categorise a payment on the basis of the payment code information alone. Correct identification requires extensive engagement with Government for banks to proactively determine which payment recipients hold eligible government cards.

ABA members will continue to work with the relevant government agencies with a view to resolving this issue by the next Code review in 2022 if the technical issues we refer to can be overcome.



Recommendation 6: Strengthen the minimum features of basic bank accounts to clarify free periodic statements, to require scheme debit, to waive all ATM fees (including from third parties) and to reduce the exempted 'ancillary services'

### Periodic statements

Chapter 31 of the Code commits to provide statements for deposit accounts 'at least every six months – or more frequently if you ask'. The lack of a specified period for provision of statements in paragraph 44B is intended to enhance customer flexibility. ABA guidelines formulated in 2012 provided for 'free monthly statements' for basic accounts. In drafting paragraph 44B, Member Banks considered that prescribing a period was inflexible and didn't allow for customer preference. Member Banks are prepared to clarify that statements will be provided free as frequently as monthly or at longer intervals if the customer wishes. To remove doubt about this, paragraph 44B could be amended to read:

"Free periodic statements (you can choose monthly or longer intervals)"

### Scheme debit

The consumer group submission indicates support for this feature of the Code but recommends that a scheme debit card should be a minimum requirement rather than simply an eftpos card.

Member Banks are committed to providing customers with, at a minimum, a choice of an entry level debit card at no extra cost. We note that eftpos should remain a choice for customers, as opposed to scheme debit being 'prescribed', but customers will be able to choose scheme debit if they wish (though a bank may not necessarily offer a choice of Visa or Mastercard, each bank offers at least one of those options). To remove doubt, paragraph 44B could be amended to read:

"Access to a debit card (such as eftpos, or a scheme debit card, such as Visa Debit or Mastercard Debit) at no extra cost"

### Waiver of ATM fees

Australian banks have provided free ATM facilities to their own customers for many years. In 2017, many banks ceased charging customers of other institutions fees for use of their ATMs. Customers also have access to fee-free cash withdrawals at a variety of outlets (including supermarkets) via eftpos.

Customers continue to incur fees for using ATMs owned independently by third party deployers. These fees are direct charges between the deployer and the customer and the industry practice is to warn customers, at the ATM, of the fees before they choose to proceed.

Independent owners account for around 57% of ATMs in Australia. The number of ATMs in Australia increased by around 25% after industry reforms in 2009 made entry of third parties easier, giving Australia one of the highest rates of ATMs per capita in the world.<sup>1</sup> The fees that independent operators charge to customers make the deployment of machines in a greater number of locations viable.

There are some remote communities that do not have access to bank-owned ATMs and hence incur disproportionately high fees for their ATM transactions. To address this, ABA members have, since 2012, operated a subsidised scheme under which customers in certain remote communities have access to fee-free ATM transactions (the ACCC reauthorised this scheme in 2017).

In our view there is no demonstrated case for the banks to subsidise these services more broadly. Doing so would come at a very substantial cost and would disincentivise banks to participate in ATM networks owned and operated by third parties.

Finally, we note that the use of cash is steadily reducing. In 2016, card payments overtook cash as the most popular means of payment.<sup>2</sup> The decline in the use of cash has consequences including

<sup>1</sup> Stephen Mitchell and Chris Thompson, "Recent Developments in the ATM Industry", RBA Bulletin, December 2017.

<sup>2</sup> See "How Australians Pay: Evidence from the 2016 Consumer Payments Survey" RBA Research Discussion Paper RDP 2017-04 <https://www.rba.gov.au/publications/rdp/2017/pdf/rdp2017-04.pdf>



increased cost of deploying ATMs on a per-transaction basis and lessening the cost to consumers or withdrawals as they rely more on other payment mechanisms such as 'tap and go'.

### **Charges for ancillary services**

ABA members believe the set of features specified in proposed paragraph 44B allows for eligible customers to access a wide range of fundamental banking services at no cost to them. In order to be transparent and avoid any misunderstanding, the note to paragraph 44B brings to customers' attention the fact that there may be certain services in respect of which a charge will be incurred. The Code specifies the main cases in which this would occur. We do not propose to provide an exhaustive list. To do so would result in reduced flexibility. It could, for example, mean basic account holders wouldn't have access to innovative new services because banks couldn't provide them at no cost and to charge for them would be a breach of the Code.

The proposed minimum features of basic accounts cover, on a rough estimate, about 95% of electronic banking transactions for these types of basic everyday banking accounts. The services we describe in the Code as 'ancillary' are typically ad hoc, occasional and additional to a standard product feature. Because they are service related and outside 'electronic banking', or involve another party or service provider, there is a cost element to them over and above the cost of providing the minimum features.

We note that the text of the consumer submission raises the following further point:

"We also flag that this open-ended exemption for 'ancillary services' may be used in order to charge for domestic transactions. For example, it is not currently clear in the Code that online transactions processed in Australia would be free—we contend they should be."

The list of features in proposed paragraph 44B includes "Free and unlimited Australian domestic transactions". There is no indication in that sentence that domestic online transactions would be excluded. On the contrary, these transactions would be included.

## **Informal overdrafts**

[Recommendation 7: Clearly state in the Code the most common instances in which informal overdrafts will still occur and ensure banks are required to inform their customers about this clearly and in plain language.](#)

We note that, in addition to asking for the ABA's response to recommendation 7, the ACCC has asked us to indicate the circumstances in which we consider that it is impossible or reasonably impractical for a bank to prevent a customer's account from being overdrawn and for each circumstance to indicate:

1. why preventing an overdraft is impossible or reasonably impractical.
2. what would be required from a bank to make overdrafts preventable.
3. what proportion of customer transactions is represented by this circumstance.

We address the ACCC's request and the consumer recommendation in a general way below.

Broadly speaking, circumstances in which informal overdrafts can occur in circumstances that are beyond the banks' control or reasonably impractical to prevent are:

- Holding deposits by merchants;
- Telecommunication system outages; and
- Offline transaction and payment network outages.

Our preference is not to give high prominence to these circumstances, as to do so could have undesirable consequences, for example by leading to customers transacting in ways which lead them into debt - which is the opposite of the intention of removing the general access to an informal overdraft. In addition, it could serve to inform recipients of stolen cards on ways of conducting transactions without real time verification.



The ABA included some examples in its application. We set out two more specific examples below.

Example 1: Holding deposits by merchants – typically hotels etc

[REDACTED]

Banks could conceivably prevent this by [REDACTED]. However, that would have the result that the majority of customers would lose the convenience of having earlier access to their funds in these circumstances despite the fact that in most cases no issue arises.

Example 2 – telecommunication system outages

As has occurred in some recent high-profile examples, from time to time the telecommunication systems that electronic payment systems rely on can fail. [REDACTED]

[REDACTED]

For the reasons noted above, decisions around blocking all access to informal overdrafts involve sensitive and difficult considerations. As the above examples make plain, to comprehensively remove any risk of informal overdrafts occurring could cause inconvenience and cost to the customers we are seeking to protect (including, for example, late fees or interest charged by merchants / utilities if a scheduled regular payment is unable to be processed), as well as detriment to the general economy.

The disallowance of transactions on bank accounts in some of these circumstances could also force customers to resort to the use of other credit facilities – potentially including, for impecunious customers, some of the expensive fringe short term credit options that exist in the market.

In relation to the ACCC's request for information around the proportion of customer transactions affected, Member Banks have advised that this is very difficult to quantify in any reliable way.

Member banks would require more time if further data of this kind is required.

Recommendation 8: The Code should explicitly prohibit banks charging interest on an overdrawn amount for basic, low and no-fee accounts.

Some banks do not charge interest in these circumstances, and at least one bank allows for a short period (3 days) in which interest will not be charged. We note also that the average period for which the accounts are overdrawn in these circumstances is likely to be relatively short, with the result that overall interest charged is modest (rates of interest charged in these circumstances (if applicable) typically accord with unsecured commercial overdraft rates – upwards of 15%)

Where an informal overdraft is provided to a customer with the intention of facilitating convenience and that amount is not repaid, interest is charged as a consequence of failure to repay the overdrawn amount – to reflect the price of the credit. The ABA considers that this is not unreasonable in the circumstances.

Member Banks have committed to ensuring that informal overdrafts will not be provided to BBAs held by 'eligible customers', other than where it is impossible or impractical for the banks to prevent the account from being overdrawn, or with the customer's express agreement. Where a customer in these



circumstances is experiencing financial hardship in respect of repaying the overdrawn amount, it would be possible for that customer to contact the bank.

For Member Banks who currently charge interest on overdrawn BBAs, banks advise that very substantial costs could be involved to build systems to prevent or limit interest on BBAs or low or no fee accounts held by eligible customers.

For these reasons, we do not propose to agree to a general prohibition in the Code on the charging of interest on informal overdrafts for eligible customers or otherwise.

## Response to ACCC questions

### Basic bank accounts

Why have banks which offer BBAs decided to offer these products in preference to low or no fee accounts? Do banks profit from these accounts or customers, or are banks motivated to offer these accounts for other reasons?

Banks that offer a BBA have chosen to do so for a range of reasons including meeting the needs of customers, a commitment to affordable banking, and corporate and social responsibility objectives. Deposits held in these accounts contribute to banks' overall funds available for commercial purposes, but profitability is not the primary motivation for offering this class of account.

On what basis do banks decide the features of BBAs? Of the BBA products currently offered, have the features changed over time or remained static? Under what circumstances have the features changed?

In response to community concerns regarding a lack of clarity and awareness around account features and eligibility criteria for BBAs, and as part of an Affordable Banking Initiative, the ABA conducted a review at the end of 2012 of then current bank offerings. The review consisted of a survey of Member Banks, a desktop review of market offerings, and consultation with community stakeholders. The review found that while there were some commonly recognised account features of these products, and that the community concerns that there was a lack of clarity and awareness were valid. The review concluded commonly recognised account features for basic accounts were:

- No account keeping fees
- Free monthly statements
- No min deposits
- Ability to set up and cancel direct debits
- No overdrawn fees
- Debit card at no extra cost
- Free and unlimited transactions including: branch, ATM withdrawals (from their own bank), eftpos, Telephone, and internet and mobile

These formed the basis of the list that was subsequently published on the ABA website. Obviously, banks are currently free to choose what features are included in such accounts. The above list also informed the drafting of the proposed paragraph 44B, but some modifications have been made.

Member Banks indicate various reasons as to why they have chosen to offer various features under their BBAs. For some Member Banks, the list published on the ABA website provided guidance in determining these features. Whilst some Member Banks indicated that their BBA products have remained static over time, other banks have indicated that features have changed over time as a result of internal product reviews, market factors and other policy requirements.



The ABA's application submits that banks do not currently compete with each other in respect of BBA features considered to be minimum community standards; however the application also advises that the ABA considers that competition will certainly drive the development of more innovative and accessible BBAs going forward.

Please provide further detail on the level of competition the ABA considers currently exists between banks in relation to BBAs, and how and why the ABA expects this to change in the future.

As indicated in the Application, the Royal Commission and the recommendations arising from the Royal Commission revealed that the ABA and Member Banks accept that there are certain community expectations around minimum standards for no fee or low fee banks accounts over which Member Banks do not generally compete in the market. That is not to say that Member Banks do not currently compete on BBAs more broadly, rather that they generally do not compete on the minimum standards of BBAs which are aimed at meeting existing community expectations.

The minimum features for a BBA contained in the Application are intended to raise the minimum standards of BBAs to meet community expectations and act as a baseline above which Member Banks can compete in relation to BBAs.

The BBA Proposals in the Application, together with existing provisions of the Code, place obligations on banks to implement processes to increase customer awareness of BBA availability and consequently increase the demand for BBAs from eligible customers.

Given the forecasted increase in demand for BBAs and the mandatory set of minimum features, the ABA anticipates that Member Banks are likely to be required to innovate and differentiate based on their individual capability or capacity to offer more favourable terms thereby driving increased demand and diversified customer choice.

As noted in the Application, the ABA considers that competition will certainly drive the development of more innovative and accessible BBAs going forward, above the minimum standard. It is important to note that Member Banks consider that they also have an important social responsibility to make constant improvements to features and terms of products aimed at low income Australians. Following the Royal Commission and the enduring focus on the financial services sector more generally, community expectations in relation to the treatment of low-income customers may also increase over time.

If a minimum standard is imposed in relation to BBAs which is higher than that currently offered by ABA members (and does not also apply to low and no-fee accounts):

- a. what incentive will there be for ABA members who currently provide BBAs to continue to do so (as opposed to switching to offer low or no-fee accounts), in circumstances where the ABA does not propose to make the provision of BBAs compulsory for its members?

As noted above, the primary motivation for offering this class of account is not profitability. Against that background, there is little incentive for banks to cease offering these accounts.

- b. does the ABA expect fewer of its members to offer BBAs?

The primary motivation for offering a BBA is not profitability. Rather, as noted above, Member Banks are cognisant of their responsibility to the community and to enhance the accessibility of banking. Meeting this responsibility is a key incentive for Member Banks.

Further, following the Royal Commission, Member Banks are eager to demonstrate their commitment to earning back the trust of the Australian people. Member Banks and the ABA have been engaged in a process of consultation to draft the proposed Code changes. The dedication of time and resources that banks have contributed to this effort is substantial and reflective of their commitment to this process. It





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would appear to make little sense for Member Banks to have made this commitment and then discontinue offering their BBA or switch to offering a low or no fee account instead.

The ABA does not expect Member Banks who currently offer BBAs to cease offering them as a result of the codification of the minimum features for which the ABA seeks authorisation. Indeed, it is the ABA's expectation that more of the Member Banks will offer the minimum standard BBAs on the terms of the ABA proposals if authorisation is received.

Please do not hesitate to contact us if you require any further information.

Yours sincerely

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